IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11310 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

FN VORA

Appearance:

1. Special Civil Application No. 11310 of 2001

MR KS JHAVERI for Petitioner No. 1

MR BA VAISHNAV for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. K.S. Jhaveri for the petitioner and Mr. B.A. Vaishnav for the respondent. By way of this petition, the petitioner corporation has challenged the award made by the Industrial Tribunal,

Nadiad in Reference (IT) NO. 86 of 1998 dated 11th December, 2000 whereby the Tribunal has set aside the order passed by the first appellate authority dated 14th March, 1997 and granted back wages for the intervening period by setting aside the punishment of stoppage of three increments with cumulative effect. This petition was admitted by this Court on 7th December, 2001 by issuing rule thereon and has granted no interim relief.

Learned advocate Mr. Jhaveri has submitted that it was not in dispute before the authority that the workman remained absent without prior permission and submitted leave report and medical certificate subsequent to the period of leave which had already expired and, thus, the misconduct of remaining absent has been proved and, therefore, some punishment ought to have been imposed against the respondent workman. According to his submission, in view of his past record also which was not good, some punishment ought to have been imposed against the respondent workman. According to him, the respondent workman was holding responsible post and in view of his absence, entire administration will be disturbed and it will adversely affect the services of the corporation and in view of all these aspects, some punishment is necessary. He has submitted that the case of the respondent has rightly been considered by the corporation and the punishment of stoppage of three annual increments with cumulative effect was just and proper and, therefore, the tribunal ought not to have granted any relief in the reference. According to him, the tribunal has ignored the past record and the factual situation that he remained absent without prior permission and it ought to have been appreciated by the tribunal that the leave report and medical certificate was produced by the workman subsequently and, therefore, the award made by the tribunal is required to be set aside by restoring the punishment imposed by the corporation.

On the other hand, learned advocate Mr.Biren Vaishnav has submitted that the tribunal has rightly appreciated the evidence which was led in the departmental inquiry; the tribunal has rightly come to the conclusion that the misconduct is not found to be proved on the basis of the record and the past record, in such a situation is totally irrelevant. Thus, according to him, the tribunal has given cogent reasons in support of its conclusions and, therefore, this Court should not interfere with the award in question made by the tribunal.

I have considered the submissions made by the learned advocates for the parties. I have also perused

the award in question made by the tribunal. The respondent was charged for the misconduct of his having remained absent without prior permission for a period from 25th December, 1994 to 2nd January, 1995. IN view of the said misconduct, he was dismissed from service by order dated 23rd April, 1996. The tribunal has examined the papers produced vide list Exh. 9. Vide Exh. 10, the legality and validity of the inquiry has not been challenged by the respondent but the findings were challenged. No oral evidence was led by led by the either side before the tribunal. Thereafter, the tribunal has examined the merits of the matter. The tribunal considered the inquiry papers which were produced vide Exh. 9 and the tribunal has considered the charge sheet No. 10 of 1995 wherein it has been alleged that he remained absent without prior permission from 25.12.1994 to 2.1.1995. The document at Exh. 12 is the report of the Depot Manager. Vide Exh. 12/1, leave report dated 26.12.1994 has been given by the respondent workman to the concerned authority wherein it has been submitted that the respondent was suffering from Malaria and, therefore, he has not been able to resume duty from 25.12.1994 to 31.12.1994 and has, therefore, requested for sanctioning the earned leave for the said period. It was also pointed out by him in the leave report that the certificate of fitness will be produced by him at the time of his joining the duties and on the same page, the civil surgeon has also issued certificate in favour of the respondent workman for the aforesaid period and he has certified that the respondent is fit for duty with effect from 3rd January, 1995. Vide Exh. 12/21, the respondent has submitted leave report dated 20th January, 1995 for two days. Thereafter, the respondent was examined in the departmental proceedings. It is necessary to be noted that in the departmental inquiry, only respondent was examined. Reporter was not examined by the inquiry officer and the charge was not admitted by the respondent workman and, therefore, it was the duty of the corporation to prove the misconduct alleged against the respondent workman. In the inquiry, question was asked to the workman that he submitted leave report for a period from 25.12.1994 to 31.12.1994 on 26.12.1994 and that leave was not refused by the corporation and no such communication has been placed by the corporation. Thereafter, the tribunal considered the entire evidence led in the departmental inquiry and it has come to the conclusion that the leave report was submitted by the respondent within time and in support of leave report, medical certificate has also been produced and subsequently fitness certificate has also been produced. After perusal of these documents, the tribunal has come

to the conclusion that the said period has been certified by the Civil Surgeon that he was sick and, therefore, has not resumed duties for the said period and the tribunal has therefore come to the conclusion that looking to the evidence led in the departmental inquiry, the misconduct alleged against the respondent has not been found to be proved and in view of these aspects, the tribunal has set aside the order of punishment and has granted back wages for the intervening period. The tribunal has come to the conclusion that the leave report was submitted by the respondent on the next day but that request made in the said report for leave has not been refused by the corporation and, therefore, in the departmental inquiry, the misconduct has not been found to be proved and, therefore, order of punishment has been set aside by the tribunal. Upon perusal of the award in question, I am of the opinion that the tribunal has discussed entire evidence which was led in the departmental inquiry and in support of its conclusions, the tribunal has given reasons which are cogent and convincing and in doing so, the tribunal has not committed any error but it has examined in detail the evidence led in the departmental inquiry and in support of its conclusion, proper reasons have been given by the tribunal. This Court while exercising the powers under Article 226/227 of the Constitution of India, cannot reappreciate the evidence which has been appreciated by the tribunal unless the findings given by the tribunal or the labour court are perverse or contrary to the evidence on record. Here, Mr. Jhaveri has not been able to point out that the findings given by the tribunal are perverse or contrary to the record. He has also not been able to point out any jurisdictional error or procedural irregularity committed by the tribunal. No infirmity has been pointed out by Mr. Jhaveri. Therefore, this Court cannot interfere with such an award made by the tribunal in exercise of the powers under Article 226/227 of the Constitution of India.

For the reasons recorded hereinabove, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

10.4.2002. (H.K. Rathod,J.)

Vyas